2010

Anna King (f.k.a. Anna Wight) v. John Andrew Wight : Reply Brief

Utah Court of Appeals

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John Wight; Appellant/Pro Se.

IN THE UTAH COURT OF APPEALS

ANNA KING (f.k.a ANNA WIGHT), Petitioner/Appellee v. JOHN ANDREW WIGHT, Respondent/Appellant	**APPELLANT'S REPLY** Case No. 20100665 Civil No. 054401587 Appeal from the Fourth District Court, Utah County Judge: Fred D. Howard

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STATUTES

Utah Code, Ann. § 78A-4-103(2)

and establishing findings, nor does it constitute clear and compelling evidence for the lack of articulated findings.[1]

Wife had clear and easy access to the commissioner's court. Such access does not constitute substantive grounds for asserting the truthfulness of her accusations. Wife omits that she misrepresented the facts and falsely accused the Husband in the commissioner's court and to the trial court on multiple occasions and that Husband has documented this in his Appellant's brief with references to the record.

Further, Wife fails to rebut Husband's documentation that Wife abused the non-evidentiary-based commissioner's hearings, where neither examination, nor cross-examination is permitted, to perpetuate false accusations. Wife also omits that her counsel's proposed orders contained false statements and were objected to and that they were often neither finalized, addressed, nor adjudicated by a district court judge. Wife appears to take the lack of such judicial examination as license to make misrepresentations.

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[1] Wife's counsel argues about the "high-conflict" nature of the divorce to the point of unnecessarily insulting the Husband as having a "lack of insight" in recognizing that the divorce was in fact high conflict. Wife's counsel then argues that due to that very inadequacy, in which counsel disparages the mental capabilities of the Husband, the justification for continued use of ACAFS and third party services is warranted. Husband asserts that counsel has misrepresented his argument. Husband responds: Whether one party, an economically-interested third party, or even a trial court labels the divorce as "high conflict," does not, in and of itself, constitute sufficient analysis, findings, or evidence to limit the parental rights of the parties or to impoverish them to the point of impecuniosity. Further, whether Husband has a "lack of insight" was never a matter before the trial court. In fact, Husband argues that critical thinking and the ability to grasp the other party's arguments are characteristics more germane in arguing the merits of this case before this Court.

In her statement, Wife presents assertions with no reference to the record, in violation of Rule 24(e) of the Utah Rules of Appellate Procedure. Rule 24(e) states:

> References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings . . ..

First, Wife asserts that a hearing in the commissioner's court on May 10, 2007 was due to Husband's "lack of compliance." No reference is given to any order stating such. Wife is simply repeating the false accusations she made in her affidavit. In fact, the hearing was based on Wife's request to "revoke" Husband's parental right to care for his children. Wife's request was not granted.

In fact, at this hearing, in May 2007, Wife stipulated to allowing Husband right of first refusal for the summer of 2007 and expressly stipulated that "neither party shall unilaterally enroll the children into a daycare program." Wife later violated this stipulation in August 2007.

There appears to be no order for this hearing of May 2007. But the hearing is critical and the Minute Entry for the hearing memorializes that a stipulation did take place. (R. 0378). Wife is using the lack of any adjudicated order from this hearing to perpetuate false accusations about the hearing itself , as well as subsequent hearings that rely upon the agreements made in this hearing. But the stipulation was binding, nonetheless, as it was made in open court.

The Audio CD copy of the May 2007 hearing was requested by Husband and presented to the trial court. The trial court made its ruling only briefly after being presented with the audio copy and seemingly never recessed to hear it. (TT6 at 693-4).

Utah Code, Ann. § 30-3-35

Utah Code, Ann. § 30-3-34

Utah Code, Ann. § 61-2g-301

Utah Code, Ann. § 30-3-3

RULES

Rule 24(e), Utah Rules of Appellate Procedure

Rule 11, Utah Rules of Civil Procedure

Rule 53, Utah Rules of Civil Procedure

JURISDICTION OF THE COURT

This court has jurisdiction over this matter pursuant to Utah Code, Ann. § 78A-4-103(2).

REPLY TO STATEMENT OF THE CASE

In her Statement of the Case, Wife misrepresents and mischaracterizes the disputes that she brought before the commissioner's court before trial and the determinations made from her actions. Wife continues her pattern of accusing Husband without reference to any evidence, and often in contradiction to the evidence. Wife seemingly feels entitled to do this because the trial court, in its actual ruling, never presented an analysis or language for findings regarding these hearings.

Husband does not deny that Wife was extremely litigious, especially in her repeated attempts to revoke the parental rights of Husband. Wife justifies the "multiple hearings" of the parties' in this divorce because of "high conflict." Wife then defines the divorce as "high conflict" because of "multiple hearings." This is circular reasoning. Husband maintains that circular reasoning does not constitute proper analysis for making

Husband asserts that the recognition of this stipulation is fundamental in preserving his rights and to demonstrate the lack of candor in Wife's argument. Husband is impecunious and has done all that he can to present the facts.[2]

Wife then cites another hearing in the commissioner's court, on September 12, 2007, and makes an unfounded and false accusation about Husband's "inappropriate behavior" at Adventure Time. Again, Wife presents this accusation without any reference to the record. Wife continually accused Husband of acting inappropriately for the simple act of picking up his children at the time he had been instructed to do so by the commissioner's court. Wife continually removed Husband's name from the daycare's list of authorized people to pick up his own children and continually misrepresented the time he should pick up his children. (Exhibit 214 and Exhibit 215).

At the hearing in September 2007, Wife continued to sue to revoke the parental rights of Husband, while simultaneously defying the stipulation about unilaterally enrolling the children in daycare.

In these hearings, Wife's affidavits included false statements about child support and medical costs. Wife hid medical knowledge and receipts of children's care until presenting it in her order to show cause pleadings, which resulted in a stipulation from Husband to pay the fees—once he had been apprised of the fees. Wife presented it as if Husband had been aware of the cost but refused to pay. In reality, it was simply a furtive

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[2] Further, at trial, the trial court acknowledged in its ruling, which was otherwise scant in its references to evidence, that the Wife had "arguably" enrolled the children into daycare "unilaterally," after the May 2007 hearing. The trial court did not address the matter of the stipulation, which expressly proscribed Wife from doing such. This is a significant defect in both the analysis and findings of the trial court. (TT6 at 807).

manipulation by the Wife to make her order seemingly "support-related" while presenting the principal argument to revoke Husband's right of first refusal.

Wife then cites the hearing in the commissioner's court on December 18, 2007 as an example of how Husband did not follow the orders of the court. This is a misrepresentation. In fact, the order resulting from this hearing was to the relief of the Husband and to the displeasure of the Wife. The minutes of this hearing clearly state: "The court is not taking the father's right away to provide surrogate care." (R. 0648).

Regarding this hearing, Wife also constructs a representation in her brief as if Husband had created problems for exchanges, which were, in fact, taking place at ACAFS, not at the parties' homes. The order for Husband to stay one block away from Wife's home, without 24 hours notice, had nothing to do with exchanges but with the fact that Husband and Wife lived (and continue to live) in the same neighborhood and Husband's mother had been procuring real estate in the same neighborhood.

Wife vigorously protested the commissioner's recommendation from this hearing she obtained in December 2007, to the point that she sought and obtained an objection hearing before the trial court and finally stipulated, after more than two years, to reasonable parenting time so that she could be relieved of the conditions imposed upon her by the commissioner's court. (R. 0669).

Regarding Wife's order to show cause on March 10, 2008, Wife presented her principal request of revoking Husband's parental rights and seeking relief from the commissioner's recommendation from the previous hearing, even as her objection

hearing was scheduled before the trial court. Her request was not granted. This caused substantial costs for the parties and was an abusive use of the commissioner's court.

Also regarding this hearing, Wife does not accurately represent that Husband had, in fact, paid in full for his custody evaluation fees in a timely manner, even before the Wife, shortly after the custody evaluator was appointed by the trial court in May of 2006. (R. 0201). It is only in the hearing of March 2008, almost two years later, that the parties were still waiting for the custody evaluation report. At this point, Husband had no funds, after years of paying child support amounts that approximated his entire gross pay, after years of maintaining the mortgage on the marital home, and after years of maintaining all of the marital debt, as well as earning approximately three (3) times less than Wife's gross annual income. The custody evaluator, shortly before this hearing, for reasons unknown, suddenly requested an "update fee" before releasing his report. There is nothing on the record to indicate why this additional fee was suddenly levied after both parties had paid their fees in full two years earlier.

Also, Wife omits the fact that Husband stipulated to paying the fee, before the hearing took place. (R. 0738). Wife brought an issue for which there was no dispute, with the real intent of seeking relief, improperly, from the previous commissioner's recommendation. Wife's request was little more than a ruse to get yet another "bite of the apple," to revoke Husband's parental rights just as she had done with previous pleadings regarding child support checks and medical costs.

Regarding the order to show cause hearing Wife obtained in June 26, 2008, Wife's representations lack candor. Wife presents the recommendations of the commissioner's courts as if they were the final adjudicated determinations of the court on those issues.

However, in the resulting objection hearing before the trial court on December 15, 2008, the trial court sustained all of Husband's objections and found that Wife and her counsel had improperly and secretly taken the parties' children to a purported therapist, Mr. Stuart Harper. Not only had Wife's counsel assumed representation for Mr. Harper, without any documented appearance, but he also had moved to quash any effort to seek information about the unconventional therapies Mr. Harper was performing on the children in secret. The trial court ruled against the Wife. (R. 1551).

Regarding the order to show cause hearing on October 30, 2008, both Husband and Wife entered a stipulation and Wife opposed a modification of child support for the Husband, which Husband eventually obtained in a subsequent hearing before the trial court. (R. 1259).

In reviewing the pleadings and hearings of the case, Wife fails to include the false accusations she made to Husband's employer at BYU that caused him to be put under official university of investigation until he was cleared, but which prejudiced him to three (3) high level administrators. (R. 1531).

Wife also fails to include the false accusations she made in legal pleadings to the trial court, accusing Husband of same behavior she alleged to Husband's employer. Wife fails to acknowledge that she admitted the accusations were false at trial. (R. 1485 ¶ 29-30 and TT5 at 408).

Wife also fails to include that in seeking ACAFS exchange services initially, she accused Husband of being "physically abusive," but then at trial admitted that Husband had never been physically abusive. (R. 223, ¶ 51 and TT5 at 389). Wife's accusations were the initial basis for securing ACAFS exchanges, to which the parties have subsequently been compelled to pay tens of thousands of dollars and which Husband is still under orders to pay to simply see his children.

Regarding the "six (6) days of trial," Wife fails to disclose that these were not full days of trial and that nearly all of the first three (3) days of trial were consumed in negotiations, which resulted in stipulations that preserved the existing parenting time for the parties (which the Husband had argued for in opening arguments) and permitted Husband to perform the priesthood ordinances for his children in the LDS faith, and other matters.

REPLY TO STATEMENT OF FACTS

In her Statement of Facts, Wife, again in violation of Rule 24(e) of the Utah Rules of Appellate Procedure, presents another series of false accusations without any reference to evidence or to the record.

To clarify, the divorce decree prepared by Wife's counsel included numerous assertions never mentioned by the trial court in its ruling, nor relating to anything presented in trial. The transcript of the actual ruling by the trial court is contained in Trial Transcript VI, pages 803-816.

Wife asserts that Husband has been the non-custodial parent "at all times." This is false. Husband has been a joint-physical custodian since March 19, 2008. Wife was the

temporary physical custodian from the time of the temporary orders in March 2006 until March 2008.

Wife fails to disclose that Husband was a primary caregiver for years in the home while Wife worked in a full-time management career during part of the parties' marriage. Wife falsely characterizes Husband's attempts to sell the marital home and to work with the Wife in getting it sold.

Wife asserts that Husband "solely" received tax benefits for the home since separation. This was not determined by the trial court, nor is it clear what was claimed by the parties for taxes in 2005, the year of separation. Further, Husband was not assigned mortgage payments until March 2006, but he paid them voluntarily. Husband had incomes below the poverty line in ensuing years and the amount of tax benefit was little, if anything, and was not considered or examined by the trial court.

Wife asserts that Husband failed to make mortgage payments. In fact, Husband made all timely payments for years, until shortly before the house was sold.
Wife falsely asserts that Husband "did not cooperate with the sale of the home." In fact, Husband performed every single act in preparing the home for sale because Wife refused to contribute or cooperate in any manner. Wife admitted that she did almost no work in preparing the home for sale.

Wife mischaracterizes the testimony of Mr. Weekes[3] and Ms. Lee. Although Mr. Weekes had vied for the commissions in selling the home, and lost the opportunity to do so, he testified that Husband answered his queries, even as Mr. Weekes never identified

himself or his intents before his queries. Neither Mr. Weekes nor Ms. Lee—who has long been a client of Wife's counsel in her own protracted divorce proceedings—stated that Husband was unmotivated in selling the home. Such an accusation is false. Husband worked tirelessly and zealously to sell the home.

Further, Mr. Weekes is not a licensed appraiser and this was reflected in the Husband's objection to Mr. Weekes as a witness. Mr. Weekes appears to have offered appraisals on the marital home as exhibits and testified to home values in court. All of this is in direct violation of the licensing rules for realtors and in violation to Utah Code § 61-2g-301. The code states:

Except as provided in Subsection (2) and in Section 61-2g-303, it is unlawful for a person to prepare, for valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being licensed or certified in accordance with this chapter.

The only exemption under subsection (2) that has any relevance to Mr. Weekes as a witness states the following:

(f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;

Clearly, Mr. Weekes is not exempt from the proscription of providing value-related statements about the marital property; in the context of court, he is offering statements in which there is a reasonable expectation to rely on his statements.

In fact, Mr. Weeke's testimony should be stricken as he has, indeed, provided value-based assessments to the court and he has, indeed, violated the statute and the rules governing his own licensing; Husband preserved his objection to Mr. Weekes in the trial.

Further, any testimony that Mr. Weekes provides also falsely presumes Mr. Weekes had personal knowledge of the home's condition when it was legally appraised more than a year before he ever had any purported contact with it.

As it currently stands, the trial court has not indicated in its findings that it relied upon anything from what these witnesses have stated, again, demonstrating that the trial court's findings are inadequate. If the trial court did rely upon them without stating so, not only did the trial court fail in articulating its findings, but it improperly relied upon testimony that was proscribed by law.

Wife fails to truthfully represent the facts regarding an ex-parte protective order she entered a few months after separation against Husband. Wife fails to represent that it was dismissed by the court, and that any "physical abuse" she alleged was completely false, by her own admission in court. She also fails to represent that the police report she submitted to the trial court contradicted her accusation that Husband pounded on her door. Although the "dispatch" record repeats her allegations, as is police procedure, the actual comments from the responding police officer in the report notes that he asked the neighbors in the attached townhome if they had heard any pounding and they stated that they had not.

REPLY TO THE ARGUMENTS

I. WIFE MISREPRESENTS THE FINDINGS AND MARSHALLING REQUIREMENT.

With regard to the adequacy of a trial court's factual findings, this Court has stated:

> Failure of the trial court to make findings on all material issues is reversible error unless the facts in the record are clear, uncontroverted, and capable of supporting only a finding in favor of the judgment. The findings of fact must show that the court's judgment or decree follows logically from, and is supported by, the evidence. The findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached.

See *Stonehocker v. Stonehocker*, 2008 UT App 11, ¶ 16, 176 P.3d 476.

In arguing that the Court should reject Husband's brief due to marshalling deficiencies, Wife misrepresents the facts.

First, Husband is not required to marshal evidence that is not there. Wife repeatedly asserts that there is "ample" evidence for everything in the divorce decree, but then fails to reference any evidence that Husband has not already referenced or marshaled in his brief, specifically regarding ACAFS and the marital home, even though Husband specifically challenged the discretion of the court on those issues. Husband included evidence on these issues in the event that the ultimate determination might require marshalling.

Second, Wife has merely asserted that the trial court has sufficiently articulated its findings without a satisfactory showing that it has done so for the issues presented. Wife fails to show how the trial court provided logical connections to the evidence, subsidiary facts, and or even the steps taken to reach its conclusions. Wife fails to account for the gross disparity in language and content between the actual ruling and the findings that Wife's counsel has inserted into the decree without reference.

Third, Wife has ignored the fact that with no clear presentations of findings, and no articulation of the connection between the facts and evidence and the findings,

Husband is limited in his capacity to marshal such evidence and, to a certain extent, identify the ultimate standard of review.

Fourth, Wife fails to acknowledge that Husband has marshaled what evidence he can, even when his challenge is not ostensibly related to challenging the findings, but in challenging the discretion of the court.

Fifth, Wife has failed to address the case law Husband has documented in his brief that supports any marshalling deficiency when the findings are deficient.

Sixth, Husband disputes Wife's reorganization and re-characterizations of the standards of review for his challenges.

Seventh, the characterization of the testimony provided by the two real estate agents is not accurate. Further, Wife falsely asserts that these two agents, Mr. Weekes and Ms. Lee were "involved in the sale of the marital home." This is completely untruthful and the agents in fact had no part in the sale of the home, nor is there any part of the record that suggests such.

Even if the trial court is to accept everything that Wife asserts that the realtors stated, and interprets it in every way that is beneficial to the Wife's argument that the marital home was lacking in some way, Wife still has not shown how it is reasonable that she should be exempt from any responsibility in improving the home for sale, that the home in any way deteriorated from its appraisal value, or that the Husband's being assigned the mortgage payments somehow justifies her complete refusal to contribute to the home for its sale. Maintaining the home is not the same as improving the home for sale.

Husband's challenge was to the trial court's abuse of discretion in this matter and its completeness in findings; Husband cannot marshal what is not actually stated , or divine what might be relevant with insufficient findings.

Eighth, Wife makes another false accusation that someone from Adventure Time, presumably Sara Earl, testified in court that Husband caused "substantial difficulties" at the daycare and was "excluded from coming to the facility." Husband cannot find this in the transcript of the trial and vigorously denies these accusations. Wife provides no reference to the record. Again, the trial court provided no detailed findings on this in its ruling.

Ninth, Wife asserts that there are "stipulations" of the parties regarding the regulation of the parties' speech and for ordering a special master with powers exceeding Rule 53 of the Utah Rules of Civil Procedure. This assertion is false. There is no stipulation on the record that reflects what is in these orders. Wife attempts to re-characterize these challenges by discussing them in the trial court's findings. The question before the Court on these two matters is not of findings; rather, the question is if there are, in fact, stipulations of the parties on the record that accurately reflect the orders on these two matters.

II. WIFE MISREPRESENTS ISSUE OF ACAFS EXCHANGE SERVICES.

Wife fails to address that the trial court abused its discretion by denying Appellant's right to be heard regarding ACAFS services, including testimony, evidence, and facts regarding the abuses he suffered from ACAFS behavior. Wife fails to address

that the trial court guided an inter alia stipulation, on the record, for terminating ACAFS exchanges after stopping Appellant's testimony shortly after he began.

Wife fails to address that the trial court approved substituting an order for a special master in lieu of ACAFS exchanges directly following testimony provided by the custody evaluator and Ms. Jensen, who both run ACAFS services and are married to each other, and who have received tens of thousands of dollars in revenues from the parties for exchanges.

Wife fails to address the abuse in discretion of the trial court in conducting extensive off-the-record proceedings on this and other issues, wherein the trial court provided clear discussion about ceasing Appellant's testimony in exchange for ordering an end to ACAFS services. Wife fails to address the clear error of the trial court in forgetting its own orders and the clear citations to the record for all of these points in Appellant's brief.

Wife fails to dispute the trial transcript clearly shows that what truncated testimony Husband did provide regarding ACAFS services compelled the trial court to call a stop to it, enter an agreement to stop ACAFS services, and proceed to discussions of specific special masters as a result of the agreement.

Wife fails to address the custody evaluator's clear written recommendation that the parties do curbside exchanges instead of using ACAFS services.

Wife cites case law that states the trial court's "proximity to the evidence places it in a more advantaged position than an appellate court." *Shinkoskey v. Shinkoskey*, 10 P.3d 1005, 1009 (Utah App. 2001). Husband argues that additional and alternative reasoning,

by virtue of this law, also supports his case. If the governing principle for accuracy is "proximity," then it stands to reason that the order or stipulation actually created most closely to the evidence itself is the most reliable. This would clearly support the trial court's guided stipulation to cease ACAFS exchanges directly following the testimony regarding ACAFS, instead of the contradicting order two months later in which the transcript clearly shows that the trial court forgot its previous order.

Further, Wife fails to note that the trial court interrupted Husband's testimony regarding ACAFS not once, but twice. In the first instance, the trial court allowed Ms. Jensen to testify out of order, and then interrupted Husband's testimony again in his attempts to respond to her testimony. (TT5 at 448).

III. WIFE MISREPRESENTS THE ISSUE OF THE SPECIAL MASTER ORDER.

Wife presents the issue of the special master order as a stipulation because of an entry in the transcript that shows Husband's counsel agreeing to one in principle. Wife's representation lacks candor for several reasons.

First, the trial court had already guided the parties to a stipulation for a special master in lieu of ACAFS services. Second, Wife omits the language Husband has provided in his brief that shows the trial court clearly forgot this stipulation and erroneously thought it was hearing about a special master for the first time. Third, Husband stipulated to the special master under this previous representation of the trial court, which it had forgot it had made. Fourth, Wife's counsel interjected his own terms of a stipulation into a direct discussion between Husband's counsel and the trial court

regarding the stipulation. Fifth, the order for special master endows the master with greater powers than those bounded by Rule 53, which terms are not captured by Wife's citation, and which in fact are not to be found on the record anywhere.

Wife also asserts that because Husband's counsel eventually approved the form of the order for special master, after objecting to it and being over-ruled, at least in part, that it constitutes a stipulation. Wife omits Husband's objections to the order for special master specifically address the overreaching nature of the current order.

Wife omits that all subsequent discussions and orders of the trial court regarding the order for special master occurred in chambers and off the record.

Wife omits any evidence of the trial court's ruling on Husband's formal objections to the order for special master.

Wife's reasoning that approving the form of the order, in an off-the-record proceeding, and under objection, constitutes a stipulation and thereby waives Husband's right to appeal is not appropriate. Following similar reasoning, Husband would have waived his right to appeal on any issue after objecting to the findings and order for the divorce decree. Husband has clearly preserved his right to appeal through objection and a timely notice of appeal on this matter.

IV. WIFE MISREPRESENTS THE ISSUE OF PRIVATE KINDERGARTEN AND EXTENDED DAYCARE.

Wife incorrectly asserts that there is no law to support Husband's appeal of private kindergarten costs. However, this Court has relied upon case law indicating that "it is not appropriate to award private school expenses in addition to child support." *Brooks v.*

Brooks, 881 P. 2d 955, 959 n.3 (Utah Ct. App. 1994) (quoting *Arnold v. Arnold* , 2008 UT App 17, ¶ 10, 177 P. 3d 189.)

Wife fails to show how the trial court's comment regarding "too much shuffling of the children" constitutes adequate or sufficient findings, without any connections, supporting detail, or subsidiary facts. The findings do not include even an expression, or any math, to show as to how Husband's care presents any more shuffling of the children than multiple exchanges at daycare. Wife asserts that Husband must marshal evidence regarding "too much shuffling" of the children, even as the trial court's findings are insufficient to even divine its rationale. Further, the statements offered do not expressly address how the presumption of preferred parental care is overcome. It is not even clear that the trial court intended in any way for such a facile statement to be taken in the context of overcoming a very critical and important legal presumption.

Neither the Wife nor the trial court ever present any language regarding any supposed impropriety of public kindergarten for the children. (Exhibit 218 and Exhibit 219).

Wife repeatedly and incorrectly asserts that Husband must marshal the evidence in order to challenge the findings, despite previous case law that states insufficient findings makes marshalling "futile."

V. WIFE MISREPRESENTS THE ISSUE OF RIGHT OF FIRST REFUSAL.

First, Wife mischaracterizes Husband's argument. Husband is not asserting that he "should be allowed to have surrogate care for any time period with his minor children." Wife has provided no reference for presenting Husband's argument as such. Husband

clearly previously argued for a time period of one (1) hour, or as presented in his brief, a time period that would not require the children to go from school to daycare and thereby go from dawn until nightfall without any parental care day after day. Husband went to substantial lengths in describing how the parties' daughter was subjected to this during her first grade year even as Husband was available and eager to provide care for her. Wife consistently exaggerates and misrepresents Husband's arguments to extremes in order to make Husband seem unreasonable.

Wife has failed to show how the court considered the presumption of parental care in Utah Code §30-3-33(15). Wife also failed to rebut Husband's assertion that the trial court did not show how the statute's presumption had been overcome.

VI. WIFE MISREPRESENTS THE ISSUE OF SUMMER PARENT TIME.

Wife evades the fact that the trial court made no ruling on the issue (that is, it made no ruling on the transcript, but indicated that it should be "pursuant to statute" off the record). Further, Wife evades the fact that even in her own prepared order that she references Utah Code §30-3-35 in designating the times for summer parent time. Wife also evades the fact that the cited statute provides specific times for summer parent exchanges, but the order then provides times that are not in the statute. Wife evades the fact that the trial court provides no findings, reasoning, or language as to why the specifically cited times should not be followed. Wife attempts to change the standard of review for this issue from a question of law.

VII. WIFE MISREPRESENTS A STIPULATION REGARDING A REGULATION OF SPEECH.

Wife asserts that there is an existing stipulation in which Husband agreed to restrict his speech to his employers or his ecclesiastical leaders. Wife's counsel's assertion is in violation of Rule 11 of the Utah Rules of Civil Procedure, which proscribes false representations of existing law. There is no such stipulation and Wife's assertion that Husband stipulated to the relevant section in the divorce decree is false.

Wife calls the divorce decree a "stipulated" order, even as Husband is appealing the order throughout all these briefs. Wife incomprehensibly argues that the order in which Husband is appealing is a "result of the stipulation of the parties." This is false.

VIII. WIFE MISREPRESENTS THE ISSUE OF MORTGAGE PAYMENT CREDITS.

Wife asserts that the trial court "heard evidence of the parties' financial circumstances, at the time of the trial, and evaluated said evidence." However, Wife does not provide a reference for this evidence or this evaluation, except to comment that the trial court noted that the parties both had marital home funds in an escrow account, as if such constituted a sufficient analysis.

Wife further argues that the trial court need not make equitable considerations in distributing the marital home asset. Finally, Wife boldly asserts, with emphasis, that any argument to the contrary is "not based in any law; only in [Husband's] prejudiced opinion."

In fact, this Court has ruled that "the overarching aim of property division . . . is to achieve a fair, just, and equitable result between the parties . . . by allocating property in the manner which best serves the needs of the parties and best permits them to pursue their separate lives." *Hodge v. Hodge*, 2007 UT App 394, ¶ 4. (quoting Noble v. Noble, 761 P. 2d 1369, 1373 (Utah 1998)).

Further, this Court has ruled that in such cases, as this one, when the trial court "elects to distribute the marital property unequally, when the circumstances and needs of the parties dictate a departure from the general rule" that it justify "its decision by 'memorializing it in . . . detailed findings' the exceptional circumstances supporting the distribution." *Id.* at ¶ 7.

Had the trial court conducted even a marginal analysis regarding the financial status of the parties, it would have quickly discovered the Husband's likelihood of impending impecuniosity and that the Wife's windfall of wealth and improved lifestyle would continue to grow. Pursuant to case law, the trial court would then have to justify its unequal distribution in its findings. The trial court has done neither.

IX. WIFE MISREPRESENTS THE ISSUE OF ASSET DEPRECIATION.

Wife's attempted justification for assigning Husband all of the financial depreciation of the marital asset instead of having it shared jointly, as the trial court actually ruled, bolsters the Husband's argument that the findings are insufficient and unclear. As the ruling is articulated, Husband should not have been obliged to pay Wife an additional $3500. Further, Wife's argument that it is alternately a fee for 12-year old carpeting in the home, which was never replaced in the home, or a depreciation

assessment, or a dissipation penalty, is yet more confusion demonstrating the inadequacy of the findings of the trial court on this matter.

X. WIFE MISREPRESENTS THE ISSUE OF ATTORNEY FEES.

First, Wife fails to disclose that she swore to not receiving child support checks multiple times in the commissioner's court after having, in fact, cashed them. (Exhibit 236). Wife also fails to disclose that she revealed certain medical costs of the children only upon putting them in pleadings in the commissioner's court in which her primary objective was to seek the revocation of Husband's parental rights, thereby furtively manipulating and obfuscating the basis for the hearings.

Wife asserts that the trial court's award for attorney fees is pursuant to subsection (2) of the Utah Code § 30-3-3(2) despite the fraudulent representations made in the commissioner's court. In fact, not only did the ruling of the trial court fail identify this designation in its ruling, but the findings inserted by the Wife into the divorce decree also neglect to identify which designation applies.

Even if subsection (2) is applied, Wife is incorrect in the assertion that ascertaining financial status, at least in part, is not a reasonable measure in exercising discretion for the award. For this reason, nearly all the case law suggests that trial courts may consider not awarding fees to an impecunious party. Husband was impecunious after the disbursements from the trial.

Finally, in concluding her argument for attorney fees, Wife presents an argument that is characteristic of the quality of her representations and legal actions throughout the entire divorce: Wife asserts that her brief is, in itself, an action to "enforce the current

orders of this trial court." Wife appears to be contorting the very act of preparing an appellate brief such that it should qualify for subsection (2) of Utah Code § 30-3-3. Further, Wife's presentation seems to imply that the award of attorney fees have not already been paid, collected, and enforced by the trial court. Wife has received all attorney fees awarded by the trial court.

CONCLUSION

Husband requests that this Court reverse and/or remand on all issues presented herein. Husband requests that this Court, in the interests of manifest justice, enter its own judgment against the continued use and expenses of ACAFS exchange services immediately, as the issue is of payment regarding these services is currently being argued to deny all parent time of Husband before the trial court. If applicable, Husband requests this Court also provide its own awards or remedies that it deems prudent for any other issues. Husband further requests costs for transmission of the record and expenses related to the preparation of this pleading.

DATED this 26 day of July, 2011.

John Wight
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPELLANT'S REPLY** was sent via first class mail, postage prepaid, on the 26 day of July, 2011 to:

Ron D. Wilkinson
The Heritage Building
815 East 800 South
Orem, Utah 84097